

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 5667 OF 2005
IN SA/208/1998

VINAYAK VASANTRAO VEHLAL
VERSUS
MALLINATH SHARNAYYA SWAMI & ANR

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Advocate for Applicant : Shri S.S.Choudhari

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 25, 2015

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PER COURT :-

1. The applicant, by this application, prays for the recalling of the order passed by this Court dated 7.6.2004, by which, the Second Appeal No.208 of 1998 was dismissed on account of there being no substantial question of law involved. Delay of 13 days has been caused in preferring this application.

2. The applicant submits that due to unavoidable circumstances, though two Advocates were engaged, none remained present when the appeal was called out on 7.6.2004. This Court, therefore, considered the grounds raised in the appeal memo and the findings recorded by both the Courts below and concluded that there was no substantial question of law involved.

3. In the light of the above contentions, I have heard the learned Advocate for the appellant on the Second Appeal as well. With his assistance, I have gone through the impugned judgments of the trial Court

dated 10.8.1987 in RCS No.52 of 1981 and the judgment of the appeal Court dated 2.1.1997 in RCA No.240 of 1987.

4. The contention of the applicant / appellant No.1 is that defendant No.2 Vasantrao Vinayak is the father of appellant No.1. Second appeal is abated against the appellant No.2. He was said to be addicted to drinking. The suit land had been sold to defendant No.1 and therefore, the said transaction was not legal, was void and is not binding upon the appellant since the suit land was mortgaged to the Land Development Bank as against a loan.

5. It is further submitted that unless the 'legal necessity' is established, the suit land could not have been sold. It is, therefore, prayed that the substantial question of law involved is whether the sale of the suit land would be legal and whether it would be binding upon the sole appellant.

6. I have considered the conclusions of the trial Court. Issues were cast. A specific issue as to whether the sale of the suit land by Vasantrao could be termed as an outcome of legal necessity, was not framed. Yet, the trial Court, upon considering the evidence before it, has concluded that the Bank had started recovering the loan from the second defendant. The appellant / plaintiff has nowhere prayed for a declaration that the sale deed executed by Vasantrao, in favour of the first defendant, was not binding upon the appellant and there was no challenge to the transaction as per the provisions of the Cooperative Act. So also, there was no murmur

against the issues cast.

7. The appellant had put in, alternatively, a case of partition and separate possession. The trial Court, therefore, concluded that the plaintiffs seemed to have taken all possible grounds in the suit. Finally, it was concluded that the plaintiffs had failed in proving that the transaction was illegal.

8. The appeal Court, upon considering the oral and documentary evidence recorded before the trial Court, concluded that Vasantrao had sold the land in order to meet the expenses of the marriage of his daughter and for repaying the loan. The appeal Court considered the grounds raised by the appellant and has specifically concluded, in paragraph No.18, that the burden was on defendant No.2 to prove the legal necessity. The evidence was considered to conclude that defendant No.2 Vasantrao was indebted to the Land Development Bank and the Cooperative Society and there was legal necessity to repay the loan. Similarly, in paragraph No.19, it was concluded that a portion of the sale proceeds were used to meet the expenses of the marriage of his daughter.

9. The appeal Court also considered Section 48 of the Maharashtra Cooperative Societies Act, 1960 and has concluded that unless there was a specific declaration in a prescribed form for creating the charge on the land, the contentions of the appellant would be rendered unsustainable. On this count as well, the appeal Court considered the evidence and

concluded that Vasantryao had incurred a loan from a Multi-purpose Cooperative Society. It was, therefore, concluded that the judgment and order of the trial Court did not call for any interference

10. Taking into account the fact situation as above, I do not find any reason to recall the order dated 7.6.2014 by which this Court has come to a conclusion that there is no substantial question of law involved.

11. As such, though I am condoning the delay, this Civil Application is rejected and the prayer as regards recalling of the order dated 7.6.2004, therefore, stands rejected.

(RAVINDRA V. GHUGE, J.)

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